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97TH CONGRESS 2d Session } SENATE { REPORT No. 97-331

AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE RELATING TO INTERNATIONAL EXTRADITION

APRIL 15 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1940]

The Committee on the Judiciary, to which was referred the bill (S. 1940) to amend chapter 209 of title 18 of the United States Code, relating to international extradition, having considered the same, reports favorably thereon and recommends that the bill pass.

AMENDMENTS

(1) On page 12, line 1, strike out the word "may" and insert in lieu thereof the word "shall"; and in lines 3 and 4, strike out "Attorney General establishes to the court's satisfaction" and insert in lieu thereof "court is satisfied".

(2) On page 13, strike out line 17 and insert in lieu thereof the following:

> punishing the person for his political opinions. When it is claimed that the foreign government is seeking the person for a political offense or an offense of a political character, the Secretary will make his determination in accordance with the followinng principles. A political offense or an offense of a political character normally does not include—
>
> (A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;
>
> (B) an offense within the scope of the Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;
>
> (C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

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(D) an offense with respect to which a treaty obligates the United States to either extradite or prosecute a person accused of the offense;

(E) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnapping, the taking of a hostage, or serious unlawful detention;

(F) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

(G) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs; or

(H) an attempt or conspiracy to commit an offense described in clauses (i) through (vii) of this subparagraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

On page 13, line 21, beginning with the words "A decision" strike out all through line 23 and insert in lieu thereof the following:

A decision of the Secretary under paragraph (1) or (2) or a decision of the Secretary under paragraph (3) with respect to whether the foreign state is seeking the person's extradition for the purpose of prosecuting or punishing the person for his political opinions is final and is not subject to judicial review. A decision by the Secretary under paragraph (3) denying the person's claim that the foreign state is seeking his extradition for a political offense or an offense of a political character may be appealed to the United States court of appeals to which an appeal under section 3195 would lie. The court shall not set aside the Secretary's decision if it is based on substantial evidence. The appeal shall be determined promptly. Pending determination of the appeal, the court shall stay the extradition of the person, unless the court determines that the appeal is frivolous or taken for purposes of delay.

Purpose of Amendments

(1) *Release pending government appeal.*—Amendment to make it clear that a person found not extraditable by a court must be released pending government appeal unless the court is satisfied that the person will flee or be a danger to the community.

(2) *Guidelines for and judicial review of political offense decision.*—Under the bill as introduced, the decision as to whether an offense was a "political offense"—and therefore not subject to extradition—was a matter for the Secretary of State. With respect to this issue, the amendments would (a) provide guidelines for the Secretary of State to follow in making the "political offense" decision. These Guidelines, in essence, provide that acts of terrorism, violence, and conduct relating to illegal narcotics trafficking are not ordinarily to be considered political offenses; and (b) provide for judicial review of the "political offense" decision by the Secretary in the courts of appeals under a substantial evidence standard.

History of the Legislation

Senator Thurmond introduced S. 1639 on September 18, 1981, to modernize the statutory provisions relating to international extradition. One day of hearings was held on October 14, 1981, during which the Committee heard from the Department of State, the Department of Justice, a distinguished professor, and a practicing attorney. The record was kept open for more than two and one-half months for other interested persons to submit written statements and comments for the record.[1] On December 11, 1981, Senator Thurmond introduced a clean bill—S. 1940—to incorporate several amendments suggested in the hearings, as well as to make a number of clarifying amendments. S. 1940 differs from S. 1639 in two significant respects. First, S. 1940 as introduced made it mandatory—rather than discretionary—for the Secretary of State to deny extradition when he is persuaded that the requesting State is seeking the person's extradition "for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions". Second, as introduced, S. 1940 made it explicit in the statute that this determination would not be subject to judicial review.

This bill was the result of several years of study by the Departments of State and Justice in cooperation with the professional staff of the Senate Committee on the Judiciary. It was originally contemplated that the primary vehicle for modernizing the extradition laws of the United States would be the Federal criminal code legislation. Since the subject matter, however, can be easily separated out as a package, Senator Thurmond elected to follow a two track procedure in this instance; thus, identical provisions to this bill are also included as subchapter B of chapter 32 in the new title 18 in the criminal code bill (S. 1630) reported by the Committee on January 25, 1982. Legislation separate from the criminal code bill has the advantage of promoting early application of this important reform to an increasing case load involving international fugitives from justice.

Statement in General

Chapter 209 of current title 18 of the United States Code (18 U.S.C. 3181–3195) entitled "Extradition" covers both interstate rendition and international extradition. This bill would retain chapter 209 for interstate rendition provisions and create a new chapter 210 for international extradition laws.

International extradition is the process by which a person located in one nation is arrested and turned over to another nation for criminal trial or punishment. The new chapter 210 consists of eight sections. Sections 3191 through 3196 deal primarily with requests made to the United States by foreign governments and set forth the procedure for determining whether a person located in this country should be delivered up to a foreign power. Section 3197 deals with the return of a fugitive extradited to the United States from a foreign nation. Section 3198 contains definitions and a provision on payment of the expenses incident to extradition. The proposed chapter replaces 18 U.S.C.

[1] Extradition Act of 1981, Hearings before the Committee on the Judiciary, U.S. Senate, 97th Cong., 1st Sess. (1981) [hereinafter cited as Hearings].

3181 and 3184–3195. Other Federal statutes on extradition, which include 18 U.S.C. 751, 752, and 1502, are not affected by this legislation.

The provisions of the proposed chapter substantially alter the present statutory law for several reasons.

First, many of the statutes on extradition have been in force without major alteration since 1882. Several have not been significantly changed since 1848. These antiquated provisions have proven increasingly inadequate in dealing with the modern problems in the international control of crime.

Second, there has been a marked increase in the number of extradition requests received and made by the United States in recent years. Those requests have revealed problems in the extradition process. Moreover, the requests have generated a number of published court decisions on constitutional and legal issues involved in international extradition. The judicial interpretation of the law contained in these court decisions fills important gaps in the present statutory law, and should be reflected in any new extradition legislation.

Third, the United States has concluded new extradition treaties with many foreign countries in the past few years. The language of the present law is not adequate to fully implement some of the provisions of the new treaties, and therefore impedes fulfillment by the United States of its international obligations.

In summary, the following significant improvements in international extradition are accomplished by S. 1940:

(1) Permits the United States to secure a warrant for the arrest of a foreign fugitive even though the fugitive's whereabouts in the United States is unknown or even if he is not in the United States. This warrant can then be entered into the FBI's NCIC system so that if the fugitive attempts to enter the United States or is apprehended in the United States for other reasons, he can be identified and arrested immediately for extradition to the requesting country.

(2) Provides a statutory procedure for waiver of extradition. This feature protects a fugitive's rights while facilitating his removal to the requesting country in instances in which he is willing to voluntarily go to the requesting country without a formal extradition hearing.

(3) Permits both a fugitive and the United States on behalf of the requesting country to directly appeal adverse decisions by an extradition court. Under present law a fugitive can only attack an adverse decision through habeas corpus. The only option available to the United States acting on behalf of a requesting country is to refile the extradition complaint with another magistrate.[2]

(4) Clarifies the applicable standards for bail at all stages of an extradition case by adopting standards largely derived from Federal court cases.

(5) Establishes clear statutory procedures and standards applicable to all critical phases of the handling and litigation of a foreign extradition request.

(6) Makes the determination of whether the requesting country is seeking extradition of a person for a "political offense" a matter for the Secretary of State consistent with statutory guidelines and subject to judicial review in the courts of appeal.

(7) Limits access to United States courts in connection with foreign extradition requests to cases initiated by the Attorney General.

[2] *United States* v. *Mackin*, — F.2d — (2d Cir. 1981).

(8) Permits use of a summons instead of a warrant of arrest in appropriate cases.

(9) Codifies the rights of a fugitive to legal representation and to a speedy determination of an extradition request.

(10) Simplifies and rationalizes the procedures for authenticating documents for use in extradition proceedings.

(11) Facilitates temporary extradition of fugitives to the United States.

Provisions of the Bill as Reported

SECTION 3191—EXTRADITION AUTHORITY IN GENERAL

1. Present Federal law

18 U.S.C. 3181 states that the present Federal laws authorizing the extradition of persons from the United States shall continue in force only if there is a treaty in force with the foreign nation requesting extradition. 18 U.S.C. 3184 requires that an extradition treaty be in force before any court can conclude that a person may lawfully be extradited to the foreign country involved. In addition, 18 U.S.C. 3186 by implication requires that a court find that the person sought is extraditable before the Secretary of State may order surrender to the foreign state. These provisions, read together, permit the United States to surrender a person to a foreign country only in accordance with an applicable treaty in force between the United States and the foreign country involved.[3] This principle has become a settled aspect of United States practice in international extradition.

2. Provisions of section 3191

Section 3191 of the proposed chapter on extradition carries forward the basic principle of the present law. The provision specifies that the United States may extradite a person in this country only if there is a treaty concerning extradition in force with the country requesting extradition, and only if the request falls within the terms of that treaty. This section refers to a treaty "concerning extradition" rather than an "extradition treaty" because an obligation to extradite a particular class of offenders is sometimes included in international agreements other than extradition treaties.[4] However, the limitation established by this section applies only to the surrender of fugitives pursuant to the chapter, and does not apply to any other legal process which may result in a person facing trial or punishment in another country. Thus, the surrender of a United States serviceman to foreign authorities for trial in accordance with the reciprocal criminal jurisdiction provisions of a Status of Forces Agreement,[5] or the depor-

[3] *Valentine* v. *U.S. ex rel. Neidecker*, 299 U.S. 5 (1936); *Argento* v. *Horn*, 241, F.2d 258, 259 (6th Cir. 1957), *cert. denied* 355 U.S. 818 (1957); *Ivancevic* v. *Artukovic*, 211 F.2d 565, 566 (9th Cir. 1954) *cert. denied*, 348 U.S. 818 (1954); Evans, *Legal Basis for Extradition in the United States*, 16 New York Law Forum 525, 529–530 (1980); 6 Whiteman, Digest of International Law 727 (1968).

[4] See e.g., Art. 14, Amending Protocol to the 1961 Single Convention on Narcotic Drugs, done at Geneva, March 24, 1972, 26 U.S.T. 1439, T.I.A.S. 8118 (entered into force for the United States August 8, 1975); Art. 8, Convention on Suppression of Unlawful Seizures of Aircraft, done at The Hague, December 16, 1970, 22 U.S.T. 1641, T.I.A.S. 7192 (entered into force for the United States October 14, 1971); Art. 8, Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, done at New York, December 14, 1973, 28 U.S.T. 1975, T.I.A.S. 8532 (entered into force for the United States February 20, 1977).

[5] See, e.g., *Holmes* v. *Laird*, 459 F.2d 1211, 148 U.S. App. D.C. 187 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 869 (1972); *Williams* v. *Rogers*, 449 F.2d 513 (8th Cir. 1971), *cert. denied*, 405 U.S. 926 (1972).

tation of an alien who happens to face criminal charges abroad,[6] remain governed by the treaty provisions and statutes relating to those processes, and not by this chapter.

SECTION 3192—INITIAL PROCEDURE

This section sets forth the steps to be followed in instituting court proceedings necessary for extradition.

1. Present Federal law

Extradition proceedings under 18 U.S.C. 3184 commence when a complaint is filed, under oath, charging that a person has committed, within the jurisdiction of a foreign government, any of the crimes for which extradition is provided under the treaty on extradition in force between the United States and that foreign government. There is no requirement under present law that a formal diplomatic request for extradition be made before the complaint is filed.

18 U.S.C. 3184 permits any Federal judge or justice, or duly authorized Federal magistrate, or any judge of a State court of record of general jurisdiction to receive complaints and issue warrants of arrest in international extradition matters. In practice, however, such cases are almost invariably filed in the Federal courts.

The present statutory scheme does not specify by whom a complaint may be filed in extradition matters. The rule developed by the courts appears to be that any person acting under the authority of the demanding government may file a complaint for extradition.[7] Thus, international extradition cases have been instituted by foreign diplomatic or consular representatives,[8] foreign policy officers[9] and even private citizens who claim to be acting on behalf of a foreign government.[10] This situation has required the courts to determine, in each case, whether the person filing the complaint is "authorized" to act on behalf of the foreign government.[11] However, in recent years, the United States Department of Justice has become the complainant in the overwhelming majority of extradition cases. The Department of Justice takes this action either pursuant to provisions in the applicable extradition treaty requiring the government of the requested state to provide assistance to the government seeking extradition[12] or pursuant to an informal international agreement for reciprocal legal representation.

The complaint must be filed in a Federal or State court in whose jurisdiction the fugitive may be found. Unfortunately, in many cases the international fugitive's location in the United States is unknown. Therefore, no complaint can be filed and no arrest warrant can be issued. The ability of United States law enforcement agencies to locate and apprehend international fugitives is greatly hampered by the

[6] See, e.g., *Kalatijis* v. *Rosenberg*, 305 F.2d 249 (9th Cir. 1962).
[7] 6 Whiteman, *supra* note 3, at 935.
[8] *United States ex rel Caputo* v. *Kelley*, 92 F.2d 603 (2nd Cir. 1937), *cert. denied*, 303 U.S. 635 (1938); *Ornelas* v. *Ruiz*, 161 U.S. 502 (1896); *Castro* v. *DeUrierte*, 12 Fed. 250 (S.D. N.Y. 1882). See, generally, 6 Whiteman, *supra* note 3, at 935; Note, *United States Extradition Proceedings*, 16 New York Law Forum 420, 432 (1980).
[9] 1 Moore, A Treatise on Extradition and Interstate Rendition, 410–415, (1891).
[10] See, e.g., *Schoenbrun* v. *Driscband*, 268 F. Supp. 332 (E.D. N.Y. 1967).
[11] See, e.g., *United States ex rel. Caputo* v. *Kelley*, *supra* note 8.
[12] *In re David*, 395 F. Supp. 803, 807 (E.D. Ill. 1975); *United States ex rel, Petruschansky* v. *Marasco*, 215 F. Supp. 953, 957 (E.D. N.Y. 1963) aff'd 325 F.2d 562 (2nd Cir. 1963), *cert. denied*, 376 U.S. 952 (1964).

lack of an outstanding arrest warrant or other judicial process in such cases.[13]

The present statutory scheme contains no provision for the release of an alleged fugitive on bail pending the extradition hearing.[14] However, the courts have claimed the inherent right to release an alleged fugitive on bail pending the extradition hearing in cases where "special circumstances" require such release.[15] The standard for release on bail in extradition cases is more demanding than in ordinary cases, and a clear presumption against bail is recognized.[16]

2. Provisions of section 3192

Subsection (a) permits the Attorney General to file a complaint charging that a fugitive is extraditable in the United States district court for the district in which the fugitive may be found. The subsection also permits a complaint to be filed in the United States District Court for the District of Columbia if the fugitive's location is not known. Under this provision, a complaint could be filed, and an arrest warrant issued, when the whereabouts of the fugitive in the United States are still being ascertained, or when it is believed that the fugitive has not yet entered the United States but may be about to do so. The word "found" is intended to have its usual, non-technical meaning, and permits extradition proceedings to be initiated in any district in which the fugitive can be physically apprehended, without regard to the manner in which the fugitive entered the district.[17]

Subsection (b) prescribes the contents of a complaint for extradition. Since all United States extradition treaties specify the documents and quantum of evidence necessary for surrender, paragraph (1) states that an extradition complaint is sufficient if it is accompanied by the evidence specified in the treaty and a copy of the formal request for extradition. Paragraph (2) deals with the documentation necessary to support a "provisional arrest," the process by which a fugitive from justice is arrested to prevent further flight while the foreign government seeking extradition assembles the necessary documents and evidence.[18] Subparagraph (A) of paragraph (2) provides that a

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[13] For example, many Federal, State, and local law enforcement agencies rely on the FBI's National Crime Information Center-"NCIC"-in determining whether an individual is wanted for arrest in another jurisdiction. Since no complaint for extradition can be filed against a fugitive whose location is unknown, there can be no Federal arrest warrant issued, and no information on the person will appear in NCIC. Thus, law enforcement officers may have no way to learn that a particular person is an international fugitive sought for extradition.

[14] In *Wright* v. *Henkel*, 190 U.S. 40 (1903), the Supreme Court reviewed former section 596 of title 18 (now 18 U.S.C. 3141) in conjunction with former section 591 (now 18 U.S.C. 3041), and concluded that there was no statute providing for admission to bail in cases of foreign extradition. The Bail Reform Act (which amended Sections 3041, 3141–3143, and 3568, and enacted 18 U.S.C. 3147–3152) did not alter this result. The Act liberalized access to bail in those cases to which the bail statutes apply, but did not broaden the availability of bail generally. Both the previous sections of the law and the provisions of the Bail Reform Act apply only to "person(s) charged with an offense," and the term "offense" is expressly defined in 18 U.S.C. 3156 as "any criminal offense . . . which is in violation of any Act of Congress and is triable in any court established by Act of Congress . . .". Since fugitives facing extradition to a foreign country are not accused of any Federal criminal offense, and will not be tried in any Federal court, the bail statute's provisions do not apply to them. *Cf. Kelley* v. *Springette*, 527 F.2d 1090, 1093 (9th Cir. 1975); *Beaulieu* v. *Comm'r of Massachusetts*, 382 F.2d 290 (1st Cir. 1967).

[15] *United States* v. *Williams*, 611 F.2d 914 (1st Cir. 1979); *Beaulieu* v. *Hartigan*, 554 F.2d 1 (1st Cir. 1977); *Wright* v. *Henkel*, *supra* note 14.

[16] *Hu Yan-Leung* v. *Soscia*, — F.2d —, (2d Cir. May 26, 1981).

[17] See, *In re Chan Kam-Shu*, 477 F.2d 333 (5th Cir. 1973), *cert. denied*, 414 U.S. 847 (1973); *Vardy* v. *United States*, 529 F.2d 404 (5th Cir. 1976), *rehearing denied*, 533 F.2d 310 (5th Cir. 1976); *In re David*, 390 F. Supp. 521 and 395 F. Supp. 903 (E.D. Ill. 1975).

[18] Provisional arrest is a well-recognized aspect of international extradition procedure, and is specifically provided for in most of the extradition treaties to which the United States is a party. See, e.g. Art. 11, Extradition Treaty, United States-Canada; signed Dec. 31, 1971, 27 U.S.T. 983, T.I.A.S. 8237 (entered into force March 27, 1976). See generally, Reuschlein, *Provisional Arrest and Detention in International Extradition*, 23 Georgetown Law Journal 37 (1934); Note, 16 New York Law Forum-420, 429–430 (1970).

complaint will support an arrest under subsection (c) if it contains information sufficient to identify the fugitive, explains the circumstances necessitating provisional arrest,[19] and either indicates that a warrant for the fugitive's arrest is outstanding in the foreign state,[20] or outlines the essential facts indicating that an extraditable crime has been committed and that the fugitive committed it. Since many of the extradition treaties contain articles which expressly set out requirements for obtaining the arrest of fugitives,[21] subparagraph (B) of paragraph (2) also permits the complaint to be filed if it contains the information required by the provisions of the applicable treaty.

Subsection (c) obliges the court to issue a warrant for the arrest of the fugitive upon receipt of the complaint unless the Attorney General requests that a summons to appear at the extradition hearing be issued instead. The subsection requires that the warrant of arrest be executed in accordance with Rule 4(d) of the Federal Rules of Criminal Procedure. This means that the warrant may be executed anywhere in the United States in the same manner as an ordinary Federal warrant of arrest. The subsection also requires that the person arrested be taken without unnecessary delay before the nearest available Federal court [22] for an extradition hearing. The language is similar to that of Rule 5 of the Federal Rules of Criminal Procedure, and is intended to insure that the person arrested under this section is speedily informed by a judicial officer of the reason for the arrest and of his rights to counsel, to cross-examine witnesses, and to introduce evidence on his behalf. It is not intended to require the dismissal of extradition proceedings solely on the ground that the fugitive arrested for extradition was taken without unnecessary delay before a judge or magistrate later determined not to be the "nearest" one. There is no requirement that the extradition hearing take place in the State in which the fugitive is found,[23] so long as there has been compliance with the provisions of this chapter.

Subsection (d)(1) provides that a fugitive arrested for extradition may be released on bail pending the extradition hearing only if he can demonstrate that "special circumstances" warrant his release. The provision continues the approach which has been followed by United States courts [24] in setting the standards for release on bail pending an extradition hearing considerably higher than the standards for release on bail pending trial on Federal charges in the United States. This approach is necessary to assure that the United States continues to carry out its treaty obligation to surrender extraditable fugitives. It is anticipated that the courts will find the "special circumstances" test satisfied "only in the most pressing circumstances and only when the requirements of justice are absolutely peremptory." [25] Such special cir-

[19] E.g., contains an indication that the fugitive is likely to flee the jurisdiction and be unavailable by the time the extradition documents arrive.

[20] See, 6 Whiteman, *supra* note 3, at 931; *Whitely* v. *Warden, Wyomnig State Penitentiary*, 401 U.S. 560, 568 (1970); *United States* v. *McCray*, 468 F.2d 848 (5th Cir. 1967).

[21] See, e.g., *Caltagirone* v. *Grant*, 629 F.2d 739 (2d Cir. 1980).

[22] "Court" is defined in section 3198(a)(1) to mean a United States district court established pursuant to 28 U.S.C. 132, or the District Court of Guam, the Virgin Islands, or the Northern Mariana Islands, or a United States magistrate authorized to conduct an extradition proceeding.

[23] Thus, the section eliminates the arbitrary rule created by the Supreme Court in *Pettit* v. *Walshe*, 194 U.S. 205 (1904). See note 40, *infra*, and accompanying text. This rule is unnecessary in light of proposed section 3194(c)(3).

[24] See notes 15 and 16, *supra*.

[25] *In re Mitchell*, 171 Fed. 289, 290 (S.D. N.Y. 1909).

cumstances might be found, for instance, when the incarceration of the fugitive would seriously damage his health,[26] or would endanger the welfare of a third party who is wholly dependent upon the fugitive for care.[27] It is anticipated that these circumstances would rarely be encountered.

Subsection (d)(3) provides that even if special circumstances are found, the release of the fugitive shall be permitted only upon such conditions as will reasonably assure his appearance at future proceedings, and assure the safety of other persons and the community. Such conditions might include surrender by the fugitive of any passport or travel documents, posting of a substantial bond, and the requirement that the fugitive maintain contact with appropriate federal agencies, such as the United States Marshals Service.

Subsection (d)(2) gives the court the discretion to release the fugitive provisionally arrested pursuant to this section if the evidence or documents required by the applicable treaty are not received within sixty days of the arrest (unless a longer period of detention is specified in the applicable treaty). The subsection resolves an ambiguity perceived by the courts with respect to the commencement and conclusion of the time period for provisional arrest by providing that this period should be calculated from the date on which the fugitive is taken into custody for extradition [28] to the date on which the documents are received by either the court or the Department of State.[29] If the court is notified that the documents have been received by the Department of State before the expiration of the 60-day period, the court is directed to defer release of the fugitive for a reasonable time pending the prompt transmission of the documents to the court by the Department of State. If a court does release the fugitive from custody due to the non-receipt of the documents within the applicable time period, subsection (d)(3) requires that the court frame conditions of release reasonably calculated to assure that person's appearance for future proceedings and the safety of other persons and the community. Release of the fugitive under subsection (d) does not terminate the proceedings, which can resume once appropriate documentation arrives.[30]

This section does not carry forward the little used authorization in 18 U.S.C. 3184 for extradition proceedings to be commenced before State judges. The section also specifies that extradition proceedings must be initiated by the Attorney General, rather than by a foreign government or one acting on behalf of a foreign government.[31] These changes reflect the fact that international extradition is strictly a function of the Federal Government,[32] and determining when and how to perform that function is properly the business of Federal officials and Federal courts. The United States Government

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[26] See, e.g., *In re Kaplan*, Civ. No. 79–2219 RF (C.D. Cal. July 29, 1979).
[27] See, e.g., *In re Itoka*, Misc. No. 79–1536–M (D. N.M. Dec. 17, 1979).
[28] See, *In re Chan Kam-Shu*, 477 F.2d 333, 339–340 (5th Cir. 1973) *cert. denied*, 414 U.S. 847 (1973).
[29] *United States* v. *Clarke*, 470 F. Supp. 979 (D. Vermont 1979).
[30] E.g., Art. 13(2), Extradition Treaty, United States-Norway, signed June 9, 1977, — U.S.T. —, T.I.A.S. 9679 (entered into force March 6, 1980).
[31] It is anticipated that in most cases the Attorney General will act through the United States attorney for the district in which the fugitive is located. If the foreign government involved feels the need to participate in the judicial proceedings, it can retain counsel and seek to enter the case as *amicus curiae*.
[32] *Valentine* v. *United States ex rel. Neidecker*, 299 U.S. 5, 8 (1936); *United States* v. *Rauscher*, 119 U.S. 407, 414 (1886).

has a sufficient interest in the vigorous enforcement of the laws (including the extradition law and treaties) to justify the participation of its legal counsel, the Department of Justice, in all court proceedings aimed at determining whether extradition can take place. Indeed, this is the approach which has been adopted in most foreign countries, many of which do not permit the United States to argue in court during proceedings in connection with a United States extradition request. In addition, United States courts are freed from any need to determine whether a private person is "authorized" by an "appropriate" foreign authority to initiate extradition proceedings. It should also significantly reduce the likelihood of extradition proceedings being used by private individuals as a tool for harassment, debt collection, or other improper purposes.

SECTION 3193—WAIVER OF EXTRADITION HEARING AND CONSENT TO REMOVAL

1. Present Federal law

Present Federal law provides no specific procedure by which a person arrested for extradition may waive the formalities and voluntarily return to the foreign country requesting surrender. This is especially unfortunate since a significant number of the fugitives arrested under 18 U.S.C. 3184 choose not to challenge the request for extradition and wish to expedite removal to the foreign country. Moreover, many of the newer extradition treaties to which the United States is a party contain provisions obliging the requested state to expedite the return of a fugitive who has waived a hearing or other procedures.[33]

2. Provisions of section 3193

Section 3193 of the proposed extradition chapter clarifies the method by which the fugitive who does not contest extradition can expedite his surrender. The provisions of this section are based on Federal statutory provisions governing a closely analogous situation: the verification of a prisoner's voluntary consent to transfer to his country of nationality under treaties on the execution of penal sanctions.[34] The section states that the court which would have handled the extradition proceeding shall verify that the fugitive's consent to be removed to a foreign country has been given voluntarily and with full knowledge of his right to consult with counsel before making a decision in the matter.

Under some circumstances, the foreign government may not be willing to accept custody of a fugitive who has offered to waive extradition.[35] There also may be situations in which the United States government would consider waiver inappropriate.[36] Therefore, the provision

[33] See e.g., Art. 10, Extradition Treaty, United States-Japan, signed March 3, 1978, — U.S.T. —, T.I.A.S. 9625 (entered into force March 25, 1980); Art. 18, Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.S. 9656 (entered into force January 24, 1980).

[34] See 18 U.S.C. 4107–4108.

[35] For example, a fugitive might wish to waive extradition on only one of many outstanding charges against him in the requesting state. Under these circumstances, that foreign state might conceivably prefer to have extraditability determined as to all of the charges.

[36] For example, many extradition treaties permit the requested state to postpone extradition until the person sought has been tried and punished for criminal charges outstanding in that state. A person facing criminal charges or imprisonment in this country might well attempt to expedite his extradition to a foreign country where less serious charges are pending, in order to avoid prosecution or punishment here. In such circumstances, it would not be appropriate for the United States to permit expedited surrender, at least not until the charges in this country have been resolved or the sentence served.

does not permit removal of the fugitive if the Attorney General notifies the court that the United States or the foreign state objects to the proposed waiver.

SECTION 3194—EXTRADITION HEARING

1. Present Federal law

Under 18 U.S.C. 3184, an alleged fugitive is entitled to a hearing at which a judicial officer determines whether extradition is lawful. 18 U.S.C. 3189 specifies that the hearing must be held "on land, publicly, and in a room or office easily accessible to the public".

At the extradition hearing, the judicial officer must determine whether the offense for which extradition is sought falls within the terms of the treaty. He must also determine whether the acts for which the fugitive is sought by the foreign country would constitute a crime had they been committed in this country. This rule, known as "dual criminality" or "double criminality", is generally considered a basic principle of international extradition law,[37] and is expressly required by many of the extradition treaties to which the United States is a party.[38] The courts have held that the double criminality requirement is satisfied whenever the acts which the fugitive is charged with having committed in the foreign country would be punishable under Federal law, the law of the State where the fugitive is found, or the laws of a majority of the States, had those acts been committed in this country.[39]

A judicial officer must also determine whether there is sufficient proof that an extraditable offense in fact has been committed. Most of the treaties to which the United States is a party require that an extradition request be supported by "such evidence of criminality as, according to the laws of the place where the fugitive shall be found, would justify his commitment for trial had the crime or offense been there committed." Many years ago, the courts viewed the words "place where the fugitive shall be found" as requiring the Federal court to determine if the foreign government's evidence is sufficient to justify a trial under the State laws of the State in which the fugitive is apprehended.[40] This approach was a reasonable one eight decades ago, because at that time Federal courts had no uniform rules of criminal procedure and routinely followed the procedural rules of the courts of the State in which they were located. However, the adoption of the Federal Rules of Criminal Procedure has made it generally unnecessary for Federal courts to refer to State law in these matters.[41] Moreover, extradition is a national act,[42] and the quantum of evidence necessary for extradition is precisely the kind of issue which should be determined by uniform national law, rather than by various State laws. For these reasons, all of the more recent extradition treaties

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[37] Shearer, Extradition in International Law, 137–141 (1971); 6 Whiteman, *supra* note 3, at 773–779; *Freeman* v. *United States*, 437 F. Supp. 1252, 1263 (N.D. Ga. 1977).

[38] See, e.g., Art. 2(1), Extradition Treaty, United States-Japan, signed March 3, 1978, — U.S.T. —, T.I.A.S. 9625 (entered into force March 25, 1980).

[39] *Cucuzella* v. *Kelikaa*, 638 F.2d 105 (9th Cir. 1981); *Brauch* v. *Raiche*, 618 F.2d 843, (1st Cir. 1980); *Freedman* v. *United States*, *supra* note 37, at 1252, 1263.

[40] *Pettit* v. *Walshe*, *supra* note 23; see e.g., U.S. ex rel. *LoPizzo* v. *Mathews*, 36 F.2d 565 (3d Cir. 1929); *U.S. ex rel. Rauch* v. *Stockinger*, 170 F. Supp. 506 (E.D. N.Y. 1959), *aff'd* 269 F.2d 681 (2d Cir. 1959), *cert denied*, 371 U.S. 913 (1959); *O'Brien* v. *Rozmann*, 554 F.2d 780 (6th Cir. 1977).

[41] *Greci* v. *Birkness*, 527 F.2d 956, 958, at note 3 (1st Cir. 1976); *Application of D'Amico*, 185 F. Supp. 925–930, at note 6 (S.D.N.Y. 1960), *appeal dismissed*, 286 F.2d 320 (2d Cir. 1960), *cert. denied*, 366 U.S. 963 (1962).

[42] 6 Whiteman, *supra* note 3.

contain language essentially requiring that the Federal law standard of commitment for trial—probable cause—be applied in weighing the sufficiency of the evidence for international extradition.[43]

The Federal Rules of Evidence do not apply in extradition proceedings,[44] where unique rules of wide latitude govern the reception of evidence on behalf of the foreign government.[45] It is settled law that hearsay is admissible, and the foreign government usually presents its case by submitting affidavits, depositions, and other written statements in order to satisfy the requirements of the applicable treaty.[46] 18 U.S.C. 3190 provides that originals or copies of depositions, warrants, or other papers are admissible in evidence at the extradition hearing if authenticated so as to be admissible for similar purposes according to the laws of the requesting country. The statute also provides that the certificate of the principal diplomatic or consular officer of the United States resident in the requesting country shall be proof that the documents are authenticated in the manner required. In essence, the documents need only be genuine and authentic—requirements that are deemed fulfilled once it is shown that under similar circumstances the requesting country's own courts would accept them as authentic. The courts have held that extradition documents bearing a certificate which is couched in the language of 18 U.S.C. 3190, and signed by one of the specified officials, are conclusively admissible.[47] As a result of these decisions, foreign governments routinely submit the documentation in support of extradition requests to the appropriate United States Embassy abroad for certification and transmission to the United States. This practice imposes undesirable burdens on the United States Foreign Service officers who must fill out the certification.[48]

The present statutory scheme offers little guidance with respect to the evidence which can be introduced on behalf of the alleged fugitive in an extradition hearing. Many cases emphasize that whether such evidence should be admitted is a decision for the court, in its discretion, to make.[49] The alleged fugitive is ordinarily permitted to testify on his own behalf [50] or to have witnesses testify for him.[51] However, it is clear from the case law that the alleged fugitive may offer to explain ambiguities in the evidence submitted against him, but may not offer evidence which merely contradicts that submitted by the requesting country, or which poses a question of credibility, or which raises an affirmative defense to conviction on the charges, or

[43] *Greci* v. *Birkness, supra* note 41 ; *Sindona* v. *Grant,* 461 F. Supp. 199 (S.D.N.Y. 1978) ; *Brauch* v. *Raiche, supra* note 39.

[44] *Sayne* v. *Shipley,* 418 F.2d 679, 685 (5th Cir. 1969), *cert. denied,* 390 U.S. 903 (1970).

[45] Rule 1101, Federal Rules of Evidence.

[46] The Supreme Court has indicated that requiring the foreign state to produce live witnesses in extradition hearings would tend to "defeat the whole object of the treaty." *Bingham* v. *Bradley,* 241 U.S. 511, 517 (1916) ; see also, *Collins* v. *Loisel,* 259 U.S. 309, 317 (1922) ; *Sayne* v. *Shipley, supra* note 44 ; *In re David, supra* note 12 ; *O'Brien* v. *Rozmann, supra* note 40.

[47] *United States* v. *Galanis,* 429 F.2d 1215, 1225–1229 (D. Conn. 1977), *rev'd on other grounds,* 568 F.2d 234, 240 (2d Cir. 1977) ; *Shapiro* v. *Ferrandina,* 478 F.2d 894, 903 (2d Cir. 1973) ; *In re Edmonson,* et al. 352 F. Supp. 22, 24 (D. Minn. 1972).

[48] The consular and diplomatic officers who must sign the certificate are usually not lawyers, and it is difficult for them to know whether the documents presented to them are in fact acceptable "for similar purposes" in the courts of the requesting state.

[49] *Freedman* v. *United States, supra* note 37 ; *U.S. ex rel. Petrushansky* v. *Marasco, supra* note 12.

[50] Coppelman, *Extradition and Rendition: History-Law-Recommendations,* 14 Boston L.R. 591, 614 (1934).

[51] 18 U.S.C. 3191 provides for compulsory process to secure the attendance at extradition hearings of witnesses on behalf of indigent fugitives. However, the statute applies only to witnesses who are resident in the United States. *Merino* v. *United States Marshal,* 326 F.2d 5, 11 (9th Cir. 1964), *cert. denied,* 377 U.S. 997 (1964).

which is incompetent by the terms of the extradition treaty under which surrender is sought.[52] This restrictive approach is appropriate because the issue before the court at an extradition hearing is probable cause, not the ultimate guilt or innocence of the accused.

Finally, the judicial officer must determine whether the treaty contains a defense to extradition which would preclude surrender in the case before him. Extradition treaties frequently bar surrender if a statute of limitations has foreclosed prosecution or punishment for the offense in question,[53] or if the fugitive has been tried or punished in the requested state for the same offense,[54] or if any of several other legal considerations are present.

Virtually every extradition treaty contains a provision barring extradition for a political offense, and many treaties also preclude extradition if the requesting country has political motives for seeking the return of the fugitive. Under the present case law, the courts decide whether the crime for which extradition has been requested is a political offense [55] but traditionally have declined to consider whether the requesting country's motives in seeking extradition are political.[56] Since these issues are usually intertwined,[57] the possibility for inconsistent results is obvious.

If the judicial officer is persuaded that the crime charged falls within the treaty, that the acts involved would constitute an offense in this country, that the evidence submitted is sufficient to sustain the charge under the treaty, and that no legal defense to extradition is applicable, it is his duty to certify these conclusions to the Secretary of State. The judicial officer also must send the Secretary of State a copy of all the oral testimony taken at the hearing. 18 U.S.C. 3184 requires the judicial officers to order the commitment of the accused to jail pending surrender, and there is no provision for release on bail at this stage of the proceedings. If the judicial officer finds that the fugitive is not extraditable, the proceedings are terminated, and the fugitive is released from custody.

2. *Provisions of section 1394*

Section 3194(a) requires that a judicial hearing be held to determine whether the person sought is extraditable (unless such as hearing has been waived under section 3193) and sets out the procedure for the hearing.

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[52] *Matter of Sindona*, 450 F. Supp. 672 (S.D.N.Y. 1978); *Shapiro* v. *Ferrandina*, *supra* note 47; *Freedman* v. *United States*, *supra* note 37; *Sayne* v. *Shipley*, *supra* note 44; *First National City Bank* v. *Aristequieta*, 287 F.2d 219, 226 (2d Cir. 1960); *Desmond* v. *Eggers*, 18 F.2d 503, 505–506 (9th Cir. 1927); *Collins* v. *Loisel*, *supra* note 46; *Charlton* v. *Kelley*, 229 U.S. 447, 458 (1913).

[53] See, generally, 6 Whiteman, *supra* note 3, at 859–865; Note, *Statute of Limitations in International Extradition*, 48 Yale L.J. 701 (1939).

[54] See, e.g., *Galanis* v. *Pallanck*, 568 F.2d 234 (2d Cir. 1978).

[55] *In re Ezeta et al.*, 62 Fed. 972 (N.D. Cal. 1894). Basically, under current case law, some courts have said that there are "pure" political offenses, such as treason or sedition, and "relative" political offenses, such as one "committed in the course of furthering civil war, insurrection or political commotion." *Id.*; *Karadzole* v. *Artukovic*, 242 F.2d 198 (9th Cir. 1957), rev'd on other grounds, 344 U.S. 393 (1957); *United States ex rel. Karadzole* v. *Artukovic*, 170 F. Supp. 383 (S.D. Cal. 1959); *Ramos* v. *Diaz*, 179 F. Supp. 459 (S.D. Fla. 1959); see Hannay, *International Terrorism and the Political Offense Exception to Extradition*, 18 Columbia Journal of Transnational Law 381 (1980).

[56] *In re Lincoln*, 228 Fed. 70 (E.D.N.Y. 1915), aff'd *per curium*, 241 U.S. 651 (1917); *In re Gonzalez*, 217 F.2d 717, 722 (S.D.N.Y. 1963); *Garcia-Guillerin* v. *United States*, 450 F.2d 1192 (5th Cir. 1971); *In re Locatelli*, 468 F. Supp. 565, F. Supp. 568, 575 (S.D.N.Y. 1979); *Sindona* v. *Grant*, *supra* note 43.

[57] Compare *Ziyad Abu Eain* v. *Wilkes*, 641 F.2d 504 (7th Cir.), cert. denied, — U.S. — (1981), with the Memorandum decision of the Secretary of State in the case of *Ziyad Abu Eain*, Hearings pp. 133–139.

Section 3194(a) provides that the court does not have jurisdiction to determine whether extradition is sought for a political offense or because of the person's political beliefs, while section 3196(a)(3) specifies that the Secretary of State must decline to order surrender of a person if, after taking into account certain statutory principles generally eliminating specified types of crimes from the political offense exception (e.g., crimes of violence and drug trafficking), he is persuaded that the person's extradition is sought for one of these reasons. The provisions taken together provide that the Secretary of State shall have jurisdiction to decide the applicability of the "political offense" exception to extradition contained in most extradition treaties, such decision to be consistent with the statutory guidelines and reviewable in the United States courts of appeal based on a substantial evidence standard. The Committee has concluded that this approach, also discussed in dealing with section 3196(a)(3) *infra*, is a desirable one for several reasons.

First, the most modern United States extradition treaties specify that the executive branch of the requested country shall decide the applicability of the political offense exception.[58] In the absence therefore of specific legislative endorsement of the court developed rule—an unlikely prospect in light of the trend in magistrate extradition decisions noted *infra* note 61—it is inevitable over the long term that the case law rule reserving the political offense decision to the courts will become the exception rather than the rule as the United States continues its ongoing program of negotiating new modern treaties. Moreover, as previously noted, under present case law the courts generally shun deciding whether the foreign government's extradition request is politically motivated, preferring to leave that decision to the executive branch. It should also be noted that the political offense decisions are made exclusively by the executive branch of the government in several foreign countries, including Canada and Germany.

Second, the decision to shield a criminal from extradition for an otherwise extraditable offense on the ground that his offense was "political" is not the type of issue which lends itself to resolution through the judicial process.[59] When dealing with a political situation in a foreign country and the relationship of particular conduct to that situation, there are few truly objective criteria by which a comprehensive definition of the term "political offense" can be based.[60] Moreover, a public court proceeding is not the most desirable forum for careful analysis of a friendly foreign state's intentions or political system. Such analysis and decisions are inextricably intertwined with, and require the expertise of those versed in, the conduct of foreign relations. The Committee has concluded that this issue is best left to the Secretary of State, subject only to limited review in the courts of appeal, along with his traditional unreviewable responsibilities with respect to political asylum.

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[58] See, e.g., Art. 5(1), Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.S. 9656 (entered into force January 25, 1980).

[59] For an excellent discussion of the political offense exception to extradition and the impact of recent cases, see Hearings, pp. 25–28, statement of William M. Hannay; Hannay, *supra* note 55.

[60] See Hearings, pp. 3, 4, 25–28, statements of Daniel McGovern and William M. Hannay; Levy, *Contemporary International Law: A Concise Introduction*, 190 (1979). The courts in various countries differ widely on what kinds of offenses are covered by the term, and legal scholars here and abroad have proposed a host of different—and frequently contradictory—proposals on the topic. See generally, Carbonneau, *The Political Offense Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and New Norms Created*, 1 ASILS International Law Journal 1 (1977); Hannay, *supra* note 55.

Finally, a decision on the political offense exception can have a devastating impact on United States relations with the requesting country. The potentially crippling effect of such decisions on foreign affairs is particularly great where it could compromise United States efforts to combat international terrorism.[61] The present law exacerbates this situation, because frequently the United States government, through the Departments of State and Justice, must take a position on the applicability of the political offense exception while the case is before the court. Moreover, the government must take this position publicly, before all the evidence and arguments are in, and despite the fact that the court or the Secretary of State may subsequently decide against extradition on other grounds. By contrast, the approach taken by the proposed chapter permits a more informed decision on extradition to be made in a manner less likely to be offensive to the friendly foreign government involved in the case.

Subsection (b) supplements present law by expressly providing that the fugitive be informed of his right to be represented by counsel at the extradition hearing. Indigent fugitives will be provided with counsel pursuant to the provisions of section 3401 relating to court-appointed counsel. The provision also requires that the fugitive be informed of his right to introduce evidence in his own behalf on matters within the jurisdiction of the court. The subsection thereby leaves intact the extensive case law on this point.[62]

Subsection (c) deals with evidence in an extradition hearing. Paragraph (1) is designed to clarify the circumstances under which documentary evidence will be admissible on behalf of either party in an extradition hearing.

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[61] Three recent extradition cases graphically illustrate this point. In the *Peter McMullen* case, McMullen was charged with the bombing of a British army installation in England. In the *Desmond Mackin* case, Mackin was charged with an attempt to murder a British soldier dressed in civilian clothes in a Belfast bus station. In the third case, *Abu Eain* v. *Wilkes*, *supra* note 57, Abu Eain was charged with the bombing murder of several children in an Israeli resort town. In both the *McMullen* and *Mackin* cases the magistrates denied extradition on the grounds that the offenses charged were "political offenses". In the *Abu Eain* case the court of appeals held the political offense exception inapplicable. William Hannay, commenting on this judicial line drawing, observed (Hearing, p. 14):

> In each of these cases, the test set forth in the 19th century English case of *In re Caetioni* . . . was accepted as the operative definition of a "relative" political offense. The court in a *Castioni* stated that a political offense is a crime which was "incidental to and formed a part of political disturbances" . . . The absurdity and ultimate cruelty of applying this test or any other "test" of a political offense is illustrated by the assertion of the magistrate in *McMullen* who taking the exception to its insane but logical end, stated: "[e]ven though the offense be deplorable and heinous, the criminal action will be excluded from deportation if the crime is committed under these pre-requisites." . . . Mechanically applying the *Castioni* test, the magistrates in *Mackin* and *McMullen* concluded that extradition was prohibited since "political disturbances" were taking place in Northern Ireland and the attempts by *Mackin* and *McMullen* to kill British soldiers were natural incidents of these disturbances.
>
> [With respect to the Seventh Circuit decision in *Abu Eain*] I find shocking the notion that the "political offense" exception is cut so far loose from any ethical mooring that Abu Eain's defense team could argue in apparent good faith that terror bombing of civilians is a legitimate technique in an "insurrection-liberation struggle," and that the political offense exception prevents extradition for such a crime. It was a sad spectacle to see a former Attorney General of the United States, representing Abu Eain, stand before the Seventh Circuit and utter that bankrupt shibboleth of moral relativism. "one man's terrorist is another man's freedom fighter." Second, the court's application of the [judicial test for a political offense] in *Abu Eain* was ultimately just as mechanical as that in *Mackin* and *McMullen* and left the unmistakable impression that the court would have *denied* extradition if Abu Eain had directed his attacks at Israeli military or governmental officials. . . . We should, I suppose, feel some relief that the Seventh Circuit recognized that the killing of children on the streets of a resort town did not constitute a "political offense."

Hannay has raised the issue factually (see Hannay, *supra* note 55 at 382) but has not speculated on the line the Seventh circuit would draw with respect to the bombing assassination of Lord Louis Mountbatten that incidentally killed his grandson, a local youth, and the mother-in-law of his daughter.

[62] See *supra* note 52, and accompanying text.

Many treaties specifically set out the manner in which extradition documents must be authenticated, [63] and subparagraph (A) of paragraph (1) provides that documents so authenticated shall be admissible. It also provides that documents authenticated in accordance with the provisions of United States law shall be deemed admissible as evidence in the extradition hearing. Thus, documents which comply with the requirements of Article IX of the Federal Rules of Evidence would be admissible in extradition proceedings. However, the provision does not require the exclusion from the hearing of evidence which fails to satisfy the Federal Rules of Evidence. Rather, the subsection merely underscores the commonsense proposition that evidence which satisfies the high standards set out in the Rules, and which would be admissible in civil or criminal proceedings in this country, should likewise be acceptable in extradition proceedings.

Subparagraph (B) of paragraph (1) is based on 18 U.S.C. 3190 and provides that a document authenticated in accordance with the applicable laws of the foreign country requesting extradition shall be admissible if it is accompanied by an attestation to this effect from a judge, magistrate, or other appropriate officer of the foreign state. The phrase "other appropriate officer" would include an official of the foreign counterpart of the Department of Justice, or any other government official likely to be familiar with legal matters in the foreign country. It further requires that the signature and position of the person so attesting be certified by a diplomatic or consular officer of the United States posted in the foreign country, or by a diplomatic or consular officer of the foreign state assigned to this country.[64] The provision thus brings the essential requirements of 18 U.S.C. 3190 more into line with Rule 902(3) of the Federal Rules of Evidence.

Subparagraph (C) of paragraph (1) permits the court handling an extradition matter to accept as evidence any documents which it is persuaded are in fact authentic, regardless of compliance with either of the two previous provisions. This rule is similar to Rule 901(a) of the Federal Rules of Evidence, and is in accord with established case law permitting the authenticity of documents presented in extradition proceedings to be established by the testimony from expert witnesses or by other evidence.[65]

Paragraph (2) of subsection (c) provides that a certificate or affidavit by an appropriate State Department official as to the existence or interpretation of a treaty is admissible as evidence of that treaty or its interpretation.

The overwhelming majority of extradition treaties require that the requesting country present such evidence of criminality as would justify commitment for trial had the crime or offense been committed in the place where the fugitive has been found. Under paragraph (2)

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[63] See, e.g., Art. 10(6). Extradition Treaty, United States-Mexico, signed May 4, 1978, — U.S.T. —, T.I.A.A. 9656 (entered into force January 25, 1980). The United States will also be a party to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, done at The Hague, October 26, 1960, 527 U.N.T.S. 189 (ratified by the Senate Nov. 28, 1979). This Convention will eliminate a substantial portion of the authentication requirement with respect to extradition documents submitted by one signatory country to another.

[64] It is anticipated that in most cases the foreign state's diplomatic or consular personnel assigned to the United States will make the certification required by the section, thereby relieving U.S. diplomatic and consular officers abroad of this chore.

[65] See, generally, *United States* v. *Galanis*, 429 F. Supp. 1215 (D. Conn. 1977), rev'd on other grounds, 568 F.2d 234 (2d Cir. 1978).

such a treaty provision may be satisfied by evidence establishing probable cause to believe that a crime was committed and that the person sought committed it. This is the usual standard for commitment for trial in Federal criminal cases.[66] This approach permits the Federal courts to apply the standard for commitment with which they are most familiar, and establishes a single, uniform standard by which the sufficiency of evidence in extradition proceedings may be measured. It is also consistent with the views expressed in several recent court decisions pointing out the advantages of dealing with the quantum of evidence for extradition in a manner consistent with Federal law.[67]

Paragraphs (1), (2), and (3) of subsection (d) carry forward the requirements of 18 U.S.C. 3184 that instruct the court to find the fugitive extraditable if the evidence presented is sufficient to sustain the complaint under the provisions of the applicable treaty, and also requires that the court find probable cause that the person before it is the person sought in the foreign state, and that none of the defenses to extradition which the court is empowered to consider are applicable. Paragraph (4) bars extradition unless the acts for which the fugitive's surrender is requested would constitute a crime punishable under State or Federal law in the United States. Finally, the subsection states that the findings required for extradition may be established by hearsay evidence or certified documents alone. This rule is similar to Rule 5.1 of the Federal Rules of Criminal Procedure, which permits a finding of probable cause to commit for trial to be based on hearsay evidence. It is also in accord with recent court decisions which point out that the kind of evidence necessary for extradition is an issue which should be determined by uniform national law.[68]

Subsection (e) details the procedures that the court must follow at the conclusion of the hearing. If the court finds that the fugitive is extraditable, it must state, in writing, its findings and rationale with respect to each of the offenses for which extradition is sought.[69] These findings must be sent to the Secretary of State, together with a transcript of the hearing.[70] If the court finds that the fugitive is not extraditable, the findings required by the subsection may be accompanied by a report rather than a transcript of the hearing.

SECTION 3195—APPEAL

1. Present Federal law

Under present Federal law, there is no direct appeal from a judicial officer's finding in an extradition hearing.[71] A person found extraditable may only seek collateral review of the finding, usually through an application for a writ of habeas corpus.[72] The foreign government that is dissatisfied with the results of the hearing must institute a new request for extradition.[73] The lack of direct appeal in extradition mat-

[66] See Rule 5.1, Federal Rules of Criminal Procedure.
[67] *Greci* v. *Birkness, supra* note 41; *Brauch* v. *Raiche, supra* note 39.
[68] *U.S. ex rel. Sakaguchi* v. *Kaulukukui*, 520 F.2d 726, 728 (9th Cir. 1975); *Shapiro* v. *Ferrandina, supra* note 47.
[69] This requirement is consistent with the practice followed by the courts today. See *Kaplan v. Vokes*, — F.2d —, (9th Cir. July 6, 1981; *Shapiro* v. *Ferrandina, supra* note 47.
[70] Present law (18 U.S.C. 3184) only requires that the court send the Secretary a transcript of the *testimony* taken at the hearing. By providing the executive branch with a fuller record of the proceedings the Secretary of State will be more fully informed in making his decision on extradition.
[71] *Collins* v. *Miller*, 252 U.S. 364, 369 (1920).
[72] See, e.g., *Sindona* v. *Grant, supra* note 43.
[73] *Hooker* v. *Klein*, 573 F.2d 1360 (9th Cir. 1978); *United States* v. *Mackin, supra* note 2.

ters adds undesirable delay, expense, and complication to a process which should be simple and expeditious.

2. Provisions of section 3195

Section 3195 of the proposed chapter permits either party in an extradition case to appeal directly to the appropriate United States court of appeals from a judge or magistrate's decision. It is anticipated that review on appeal will be very narrow, and that any findings of fact by the lower court will be affirmed unless they are clearly erroneous.

Subsection (a) specifies that the appeal shall be filed within the time limits set out in Rules 3 and 4(b) of the Federal Rules of Appellate Procedure, i.e., 10 days for the person sought and 30 days for the government. These are the same deadlines for filing a notice of appeal in criminal cases, and while the an extradition hearing is not a trial,[74] or even strictly a criminal proceeding,[75] these deadlines adequately balance the competing interests of fairness and expedition. It is anticipated that other aspects of the appeal process (such as the preparation and submission of the record, briefing, argument and decision) will be governed by the applicable provisions of the Federal Rules of Appellate Procedure.

If the fugitive has been found extraditable, subsection (a) requires that surrender to the foreign government be stayed pending determination of the appeal by the court of appeals.[76] This provision prevents the government from mooting the appeal by spiriting the petitioner out of the country while the matter is *sub judice*. The provision is designed to maintain the *status quo* with respect to the fugitive's custody pending appeal. It is anticipated that the district court will not ordinarily stay or delay any other element of the extradition process, such as the certification of its findings to the Secretary of State under section 3194(e).

Subsection (b) provides that a person found extraditable must remain in official detention pending the appeal unless the court of appeals finds that special circumstances require release. This is a slight amelioration of present law, which does not permit the release of a fugitive on bail after he has been found extraditable.[77] The change is desirable because the same kind of pressing, unusual situation which might require that the person sought be released from custody on bail pending the extradition hearing [78] could conceivably arise after the extradition hearing. However, it is anticipated that this authority to release a fugitive on bail will be utilized even more sparingly than the power to grant bail before the extradition hearing, and only after the most thorough and searching examination of the claimed need for release. It is expected that the courts of appeal will keep in mind that "no amount of money could answer the damage that would be sustained

[74] *Glucksman* v. *Henkel*, 221 U.S. 508, 512 (1911).

[75] *United States ex rel. Oppenheim* v. *Hecht*, 16 F.2d 955, 956 (2nd Cir. 1927); *United States ex rel. Klein* v. *Mulligan*, 1 F. Supp. 635, 636 (S.D. N.Y. 1922).

[76] The automatic stay of extradition expires when the court of appeals issues its mandate in the matter. Thus, the automatic stay would not ordinarily protect a fugitive seeking further, discretionary review, such as an applicant for a writ of *certiorari* from the Supreme Court. Of course, the fugitive whose case merits further review is free to request that either the court of appeals or the Supreme Court exercise its discretion by staying surrender while *certiorari* or other relief is considered.

[77] In fact, 18 U.S.C. 3184 specifically provides that a person found extraditable must be committed "to the proper jail, there to remain until . . . surrender shall be made".

[78] See *supra* notes 23 and 24, and accompanying text.

by the United States if [the fugitive] were to be released on bond, flee the jurisdiction, and be unavailable to surrender. . . ." [79]

If the person was found not extraditable, subsection (b)(2) permits the district court to order that the person be released pending an appeal by the government. Release shall be ordered unless the district court is satisfied that the appellee is likely to flee before the appeal is decided, or endanger the safety of any other person or the community.

A major purpose of section 3195 is to simplify, and thereby expedite, the extradition process by providing for a direct appeal from a contested decision on extradition. The direct appeal provided by this section largely eliminates the present need for habeas corpus proceedings in order to obtain judicial review of the initial finding that a person is extraditable. This purpose would be frustrated if a fugitive bent on dilatory tactics were permitted to pursue an appeal under this section, a petition for *certiorari* to the Supreme Court, and then begin one or more rounds of habeas corpus proceedings. Such a course of action would lengthen the extradition process rather than shorten it. Therefore, subsection (c) deprives any court of jurisdiction to review a finding that a fugitive is extraditable under this chapter unless the fugitive has exhausted the appellate remedies available to him by right in this section. It also forecloses an appeal, a petition for habeas corpus, or declaratory judgment action if the validity of the fugitive's commitment for extradition has been ruled upon in prior proceedings, unless grounds are offered which could not have been presented previously.

The resolution of challenges to judicial action in international extradition cases should be especially prompt. Extradition cases are quasi-criminal in nature. Moreover, in such cases, our government's willingness to make a timely and ungrudging execution of its solemn treaty obligations to a friendly nation is in question.[80] Therefore, this section requires that courts of appeal decide cases arising under this chapter expeditiously.

SECTION 3196—SURRENDER OF A PERSON TO A FOREIGN STATE

1. Present Federal law

Under 18 U.S.C. 3186, the Secretary of State may order that any person found extraditable by a court under 18 U.S.C. 3184 be delivered to an authorized agent of the government seeking extradition. Although it is generally agreed that the Secretary's decision in this matter is discretionary,[81] present law provides no indication of the parameters of the Secretary's discretion.

18 U.S.C. 3188 states that if a fugitive found extraditable under 18 U.S.C. 3184 is not removed from the United States within "two calendar months" of the court's commitment order, he may be released from custody unless there is "sufficient cause" why release should not be ordered.[82] The courts have held that if the fugitive institutes litigation challenging his extradition, the two-month period commences

[79] *Jimenez* v. *Aristequieta*, 314 F.2d 649 (5th Cir. 1963).
[80] *Magisano* v. *Locke*, 545 F.2d 1228, 1230 (9th Cir. 1976).
[81] See, generally, Note, *Executive Discretion in Extradition*, 62 Columbia Law Review 1313 (1962).
[82] *In re Factors' Extradition*, 75 F.2d 10 (7th Cir. 1934); *In re Normano*, 7 F. Supp. 329 (D. Mass. 1934); 6 Whiteman, *supra* note 3, at 1064–69.

when the claims are finally adjudicated rather than when the commitment order was issued.[83]

2. Provisions of section 3196

Subsection (a) carries forward the essence of 18 U.S.C. 3186 by providing that the Secretary of State shall make the final decision as to extradition. The subsection requires that the Secretary's decision be made in accordance with the chapter and the applicable treaty, and lists the actions that the Secretary may take.

Subsection (a)(1) simply permits the Secretary to order the surrender of a person the court has found to be extraditable to a duly appointed agent of the foreign state.

Subsection (a)(2) permits the Secretary to condition the surrender of a fugitive upon the acceptance by the foreign state of restrictions or conditions he considers necessary in the interest of justice or to effectuate the purposes of the treaty. This provision underscores the Department of State's authority to impose such restrictions where humanitarian concerns [84] or questions concerning trial procedures in the requesting state exist.[85] It would also permit the imposition of restrictions expressly contemplated in the provisions of some newer treaties.[86]

Subsection (a)(3) provides that the Secretary of State shall deny extradition where he is persuaded that the foreign state is seeking the person's extradition "for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions." The first of these determinations—i.e., whether the offense is a "political offense or an offense of a political character"—currently is decided by the courts. The Committee concluded that the adversary judicial procedure requiring State Department expert testimony on and evaluation of volatile political situations in foreign countries is an unsatisfactory way to resolve this issue. Other fundamental reasons underpinning structural alteration of the decision-making apparatus with respect to the political offense exception were addressed in the discussion relating to section 3194 *supra* and are not repeated here. This bill meets these problems by shifting the political offense exception decision to the Secretary of State, subject to judicial review based on a substantial evidence test in the court of appeals for the circuit in which the extradition proceeding took place. With respect to judicial review, it should be noted that an adequate administrative record must be made providing the factual basis for the Secretary's decision.

In addition, the bill provides guidelines to be applied by the Secretary of State that are intended to prevent relief from extradition for the specified offenses except in the most rare circumstances. This part of the bill reads as follows:

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[83] *Jimenez* v. *United States District Court for the Southern District of Florida*, 84 S. Ct. 14, 11 L. Ed. 2nd 30 (1963); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

[84] See, e.g., *Peroff* v. *Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976), *cert. denied*, 429 U.S. 1062 (1977); *Sindona* v. *Grant*, *supra* note 43 at 207; see Note, Columbia Law Review, *supra* note 81.

[85] For example, the Department of State has frequently conditioned surrender of a fugitive convicted in absentia upon a promise by the foreign country involved to permit a retrial. See. 6 Whiteman, *supra*, note 3, at 1051, 1117–1122.

[86] For example, some treaties permit the requested state to condition extradition upon satisfactory assurances that the death penalty will not be imposed. See e.g., Art. 6, Extradition Treaty, anada-United States, signed December 31, 1971, 27 U.S.T. 983, T.I.A.S. 8237 (entered into force March 27, 1976).

When it is claimed that the foreign government is seeking the person for a political offense or ano ffense of a political character, the Secretary will make his determination in accordance with the following principles. A political offense or an offense of a political character normally does not include—

(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed by The Hague on December 16, 1970;

(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

(D) an offense with respect to which a treaty obligates the United States to either extradite or prosecute a person accused of the offense;

(E) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnapping, the taking of a hostage, or serious unlawful detention;

(F) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

(G) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs; or

(H) an attempt or conspiracy to commit an offense described in paragraphs (A) through (G) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

The first four criteria involve commitments made by the United States pursuant to international conventions or agreement, such as aircraft hijacking and terrorist acts against internationally protected persons. The next two cover serious crimes of violence against the person, including endangering others through the use of firearms or explosives. The seventh criteria relates to drug trafficking, while the eighth factor deals with attempt, conspiracy, and accomplice liability for the preceding categories of offenses.

It should be noted that the guidelines in fact set forth certain types of offenses that should not "normally" be found to be "political offenses". Use of the term "normally" recognizes that there may be a rare situation in which the nature of, and events in, a foreign country and the traditions of freedom and political democracy in the United States combine to compel the Secretary of State to find one of the listed offenses a political offense under the circumstances of the case. While the Committee elected to retain this narrow flexibility, it is noted that the United States has well established principles governing executive authority to grant political asylum that should more than adequately provide the alternative and preferred basis for ap-

propriate relief from extradition on political grounds consistent with the traditions, heritage, and foreign policy principles of this country.

It should also be noted that this provision provides that any evidence or arguments the fugitive wishes to present to the Secretary of State with respect to the alleged political nature of extradition shall be in writing. The Secretary is not required to provide a formal hearing on a political offense exception application,[87] but it is expected that the Secretary will utilize the resources of the Department of State for gathering evidence and assessing the claim.

Subsection (a) also makes it explicit in the statute that the decisions of the Secretary of State under paragraphs (1), (2), and (3) of that subsection are in the nature of post-judicial "last step" final administrative determinations prior to actually effecting the extradition and, as such, are not subject to judicial review.

Finally, subsection (a) expressly authorizes surrender of United States nationals unless surrender is expressly prohibited by the applicable treaty.[88] This provision is necessary in light of the decision in the *Valentine* [89] case in which the Supreme Court held that language contained in many of the older extradition treaties to which the United States is a party does not permit the surrender of United States citizens absent explicit statutory authority for such surrender. The result of the *Valentine* decision has been to effectively immunize United States citizens from extradition in many cases—a result never intended by the negotiators of the treaties involved. It is the policy of the United States to treat its citizens and aliens within its borders equally in extradition matter,[90] and this subsection permits that policy to operate effectively.

Subsection (b) requires that the Secretary of State notify all interested parties of his decision on extradition.

Subsection (c)(1) provides that the fugitive shall be released from custody if the Secretary of State does not order, or declines to order, the person's surrender within forty-five days after receiving the record of proceedings from the court. Of course, if the Secretary of State decides within forty-five days to refuse to order extradition, the authority for holding the person sought in custody under section 3194(e)(1) immediately expires, and the person should be released from detention at once.

Subsection (c)(2) is based on the provisions of 18 U.S.C. 3188, and provides that when the Secretary of State has ordered a person extradited, the foreign country involved must take custody of the person and remove him from the United States within 30 days. This 30-day time period does not begin until all litigation challenging extradition has been completed. The subsection expressly excludes from consideration the time during which surrender has been stayed pending litigation.

Subsection (c) requires a person found extraditable to give the Secretary of State reasonable notice that he will seek release because of expiration of a time limitation set forth in subsection (c)(1) or (c)(2), and forbids release if good cause is shown for the delay in effecting surrender.

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[87] *Peroff* v. *Hylton*, 563 F.2d 1099, 1102–1103 (4th Cir. 1977).

[88] At present, no extradition treaty to which the United States is a party expressly prohibits surrender of citizens of the requested state.

[89] 299 U.S. 5 (1936), *supra* note 32.

[90] Many foreign countries do not extradite their citizens because those countries can instead prosecute and punish their citizens for crimes committeed in another country. As a general rule, the United States has no such ability. *Escobedo* and *Castillo* v. *Forsch*, 623 F.2d 1098 (5th Cir. 1980); 6 Whiteman, *supra* note 3, at 876–878.

SECTION 3197—RECEIPT OF A PERSON FROM A FOREIGN STATE

1. Present Federal law

18 U.S.C. 3192 authorizes the President to "take all necessary measures for the transportation and safekeeping" of a person extradited to the United States from a foreign country. At one time the President relied upon this statute to issue a warrant designating an agent to receive custody of a fugitive from a foreign government. 18 U.S.C. 3193 authorizes such an agent to convey the fugitive directly to the place of trial, and grants to the agent "all the powers of a Marshal of the United States, in the several federal districts through which it may be necessary for him to pass with [the] prisoner . . .". The authority to issue warrants and appoint agents under these sections has now been delegated to the Secretary of State.[91] However, the Department of State wishes to transfer to the Department of Justice the authority to appoint agents and issue warrants in these matters.

2. Provisions of section 3197

Section 3197 of the proposed chapter carries forward the provisions of 18 U.S.C. 3192 and 3193, with minor modifications reflecting present United States practice.

Subsection (a) authorizes the Attorney General to designate an agent to receive custody of a fugitive surrendered by a foreign government, and permits the agent to convey the fugitive to the place of trial in the United States. The final sentence of the subsection permits the extradited fugitive to be taken directly to the Federal district or State jurisdiction in which charges are outstanding, without removal proceedings under Rule 40 of the Federal Rules of Criminal Procedure or interstate rendition proceedings.

Section 3197(b) is new, and is designed to implement provisions, found in some of the most recent United States extradition treaties. The laws in many foreign countries require that extradition be postponed until the person has satisfied any outstanding criminal charges in that country.[92] Frequently, a person sought by the United States has already been tried and convicted of other charges in the requested country and has a sentence to serve there. If the sentence abroad is a long one, the postponement of surrender could compromise the possibility of a speedy and fair trial in this country.[93] Some extradition treaties contain provisions which deal with this problem by permitting "temporary extradition". Under these treaty provisions, a fugitive convicted abroad would be surrended to the United States solely for purpose of trial and sentencing here, then returned to the foreign country involved to finish the sentence previously imposed there.[94] This process balances our government's interest in adjudicating the charges while the evidence is fresh with the foreign country's desire to fully enforce its laws. It also works to a fugitive's benefit by

[91] Executive Order 11517, 35 Fed Reg. 4937 (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News, at 6232.

[92] See, e.g., Extradition Act, R.S.C. 1952, c. 322 (Canada); s. 24, Ley de Extradicion (Dec. 29, 1975), Art. 11 (Mexico).

[93] *United States v. Rowbotham*, 430 F. Supp. 1254 (D. Mass. 1977); *United States* v. *Dolack*, 484 F.2d 527 (7th Cir. 1973). It is well to remember that both the prosecution and the defense suffer when a criminal trial is delayed too long. Indeed, as the Court of Appeals trenchantly remarked in *United States* v. *Judice*, 457 F.2d 418, 418 (5th Cir. 1972): ". . . all practiced trial lawyers are well aware that attrition from . . . delay is more damaging to the prosecutor's case than to that of the defense. This will be so as long as the prosecution has the burden of proof."

[94] Cf. 6 Whiteman, *supra* note 3, at 1052–1053.

enabling him to answer the charges in this country while evidence for his defense is still available, and by creating the possibility that the sentence imposed upon conviction in this country could run concurrently with that the fugitive must serve abroad.

Section 3197(b) provides implementing legislation for treaty provisions of this type. It provides that when a foreign state has delivered a person to the United States on the condition that the person be returned at the conclusion of the criminal trial or sentencing, the Bureau of Prisons shall keep the person in custody until the judicial proceedings are concluded, and thereafter surrender the person to a duly appointed agent of the foreign country. It also provides that the return to the foreign state of the person is not subject to the requirements of the chapter, such as an extradition hearing or an order of surrender by the Secretary of State.

SECTION 3198—GENERAL PROVISIONS FOR CHAPTER 210

1. In general

This section contains the definitions and general provisions applicable to the extradition chapter.

2. Present Federal law

18 U.S.C. 3198 requires that the foreign government which sought extradition pay all costs and fees resulting from the request. The costs resulting from extradition requests here frequently are so small that it is uneconomical—and diplomatically embarrassing—to attempt to enforce this statute. Moreover, many of the extradition treaties to which the United States is a party contain provisions which modify this statutory rule.[95] Also, the United States has entered into informal arrangements with some countries whereby each country bears most of the cost of the other's extradition request. In short, the present statute does not adequately reflect government policy in extradition matters.

Present statutory law offers no guidance as to who must pay the costs associated with United States requests to foreign countries for the extradition of fugitives. The Department of State requests extradition on behalf of either the State within the United States in which the fugitive is charged, or, if Federal charges are involved, on behalf of the United States. Therefore, the long-standing policy of the Department of State has been that the State jurisdiction which sought the fugitive's return must pay any expenses incurred in connection with the extradition request, and the Department of Justice must pay the expenses incurred in obtaining the extradition of a fugitive Federal offender.

2. Provisions of section 3198

Subsection (a) of section 3198 sets forth definitions for the terms "court", "foreign state", "treaty", and "warrant".

[95] For example, Art. 21, Extradition Treaty, United States–Mexico, signed May 4, 1978, —, U.S.T. —, T.I.A.S. 9656 (entered into force January 25, 1980) requires that the requested state bear all of the expenses of extradition except those incurred for the translation of the documents or the transportation of the fugitive. Extradition treaties are considered self-executing, Bassiouni, International Extradition and World Public Order 30–31 (1976), and supercede the provisions of prior inconsistent federal legislation, Restatement (Second) of Foreign Relations Law of the United States, § 141, Comment (b) at 433 (1965). Therefore, whether 18 U.S.C. 3195 or a differing treaty provision is applicable in a particular extradition case depends on when the treaty entered into force.

Subsection (b) states that in general a foreign state which has requested the extradition of a fugitive located in the United States must bear all costs and expenses incurred in connection with that request. Since many of the extradition treaties contain provisions specifically dealing with costs in extradition matters, the subsection authorizes the Secretary of State to direct that this matter be handled in accordance with terms of the applicable treaty or agreement. Subsection (b) also requires that all costs and expenses incurred in connection with the execution of a request by a State of the United States for the return of a fugitive located in another country must be paid by that State. When the request for extradition is made to secure the return of a fugitive wanted for a Federal offense, the expenses must be borne by the United States. It is anticipated that when the fugitive involved is sought for both Federal and State offenses, the costs incurred abroad will be allocated accordingly.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 13, 1982.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1940, the Extradition Act of 1981, as ordered reported by the Senate Committee on the Judiciary, March 30, 1982.

This bill will amend chapter 209, title 18, United States Code, by revising federal statutes that implement U.S. extradition treaties with foreign countries. Designed to improve the effectiveness and efficiency of international extradition, S. 1940 allows foreign fugitives to waive extradition proceedings if they are willing to return to the requesting country. It allows for a simplified appeals process and in appropriate cases, the use of a summons instead of a warrant of arrest. S. 1940 codifies the current practice of providing legal counsel and requires a speedy determination of extradition request. It permits the United States to secure a warrant for the arrest of a foreign fugitive even when the fugitive's whereabouts are unknown. The bill also grants the Secretary of State the authority to determine whether the requesting country is seeking extradition of a person for a political offense, for an offense of a political character, or for the purpose of prosecuting or punishing a person for his political opinions.

It appears that no significant additional cost to the government would be incurred as a result of enactment of this bill, and that some small savings may result from improved efficiencies and from the streamlining of the international extradition statutes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH,
(For Alice M. Rivlin, Director.)

Regulator Impact Statement

In compliance with paragraph 5, rule XXVI of the Standing Rules of the Senate, it is hereby stated that the Committee anticipates that the bill will have no additional direct regulatory impact. After due consideration, the Committee has determined that the changes in existing law contained in the bill will not increase or diminish any present regulatory responsibilities of the United States Department of Justice or of any other Department which exercises responsibilities with respect to international extradition.

Vote of the Committee

The Committee, by voice vote, approved for reporting S. 1940, as amended by the Committee.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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[CHAPTER 209—EXTRADITION

CHAPTER 209—INTERSTATE RENDITION

[Sec.
[3181. Scope and limitation of chapter.
[3182. Fugitives from State or Territory to State, District or Territory.
[3183. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of United States.
[3184. Fugitives from foreign country to United States.
[3185. Fugitives from country under control of United States into the United States.
[3186. Secretary of State to surrender fugitive.
[3187. Provisional arrest and detention within extraterritorial jurisdiction.
[3188. Time of commitment pending extradition.
[3189. Place and character of hearing.
[3190. Evidence on hearing.
[3191. Witnesses for indigent fugitives.
[3192. Protection of accused.
[3193. Receiving agent's authority over offenders.
[3194. Transportation of fugitive by receiving agent.
[3195. Payment of fees and costs.]

Sec.
3181. Fugitives from State or Territory to State, District, or Territory.
3182. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of the United States.
3183. Payment of fees and costs.

[§ 3181. Scope and limitation of chapter

[The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.]

[§ 3182.] § *3181*. Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the persons demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

[§ 3183.] § *3182*. Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States

Whenever the executive authority of any State, Territory, District, or possession of the United States [or the Panama Canal Zone], demands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

§ 3183. Payment of fees and costs

All costs or expenses incurred in any interstate rendition proceeding and apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

[§ 3184. Fugitives from foreign country to United States

[Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge

of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

[§ 3185. Fugitives from country under control of United States into the United States

[Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

[(1) Murder and assault with intent to commit murder;

[(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money;

[(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same;

[(4) Forgery or altering and uttering what is forged or altered;

[(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries;

[(6) Larceny or embezzlement of an amount not less than $100 in value;

[(7) Robbery;

[(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein;

[(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein;

[(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, bank-

ing houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein;

[(11) Perjury or the subornation of perjury;

[(12) Rape;

[(13) Arson;

[(14) Piracy by the law of nations;

[(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government;

[(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

[This chapter, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

[No return or surrender shall be made of any person charged with the commission of any offense of a political nature.

[If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

[§ 3186. Secretary of State to surrender fugitive

[The Secretary of State may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged.

[Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

[A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

[§ 3187. Provisional arrest and detention within extraterritorial jurisdiction

[The provisional arrest and detention of a fugitive, under sections 3042 and 3183 of this title, in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

[No person shall be held in custody under telegraphic request by virtue of this section for more than ninety days.

[§ 3188. Time of commitment pending extradition

[Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two

calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

[§ 3189. Place and character of hearing

[Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

[§ 3190. Evidence on hearing

[Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

[§ 3191. Witnesses for indigent fugitives

[On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate hearing the matter may order that such witnesses be subpenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.

[§ 3192. Protection of accused

[Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safekeeping and protection of the accused.

[§ 3193. Receiving agent's authority over offenders

[A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime

committed within the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

[§ 3194. Transportation of fugitive by receiving agent

[Any agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State or Territory from which he has fled.

[§ 3195. Payment of fees and costs

[All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

[All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate, shall be certified by the judge or magistrate before whom the hearing shall take place to the Secretary of State or the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

[The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.]

CHAPTER 210—INTERNATIONAL EXTRADITION

Sec.

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§ 3191. Extradition authority in general

The United States may extradite a person to a foreign state pursuant to this chapter only if—

(a) there is a treaty concerning extradition between the United States and the foreign state; and

(b) the foreign state requests extradition within the terms of the applicable treaty.

§ 3192. Initial procedure

(a) IN GENERAL.—The Attorney General may file a complaint charging that a person is extraditable. The Attorney General shall file the complaint in the United States district court—

(1) for the district in which the person may be found; or

(2) for the District of Columbia, if the Attorney General does not know where the person may be found.

(b) COMPLAINT.—The complaint shall be made under oath or affirmation and shall specify the offense for which extradition is sought. The complaint—

(1) shall be accompanied by a copy of the request for extradition and by the evidence and documents required by the applicable treaty; or

(2) if not accompanied by the materials specified in paragraph (1)—

(A) shall contain—

(i) information sufficient to identify the person sought;

(ii) a statement of the essential facts constituting the offense that the person is believed to have committed, or a statement that an arrest warrant for the person is outstanding in the foreign state; and

(iii) a description of the circumstances that justify the person's arrest; or

(B) shall contain such other information as is required by the applicable treaty;

and shall be supplemented before the extradition hearing by the materials specified in paragraph (1).

(c) ARREST OR SUMMONS.—Upon receipt of a complaint, the court shall issue a warrant for the arrest of the person sought, or, if the Attorney General so requests, a summons to the person to appear at an extradition hearing. The warrant or summons shall be executed in the manner prescribed by rule 4(d) of the Federal Rules of Criminal Procedure. A person arrested pursuant to this section shall be taken without unnecessary delay before the nearest available court for an extradition hearing.

(d) DETENTION OR RELEASE OF ARRESTED PERSON.—

(1) The court shall order that a person arrested under this section be held in official detention pending the extradition hearing unless the person establishes to the satisfaction of the court that special circumstances require his release.

(2) Unless otherwise provided by the applicable treaty, if a person is detained pursuant to paragraph (1) in a proceeding in which the complaint is filed under subsection (b)(2), and if, within sixty days of the person's arrest, the court has not received—

(A) the evidence or documents required by the applicable treaty; or

(B) notice that the evidence or documents have been received by the Department of State and will promptly be transmitted to the court;

the court may order that the person be released from official detention pending the extradition hearing.

(3) If the court orders the release of the person pending the extradition hearing, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

§ 3193. Waiver of extradition hearing and consent to removal

(a) INFORMING THE COURT OF WAIVER AND CONSENT.—A person against whom a complaint is filed may waive the requirements of formal extradition proceedings, including an order of surrender, by informing the court that he consents to removal to the foreign state.

(b) INQUIRY BY THE COURT.—The court, upon being informed of the person's consent to removal, shall—

(1) inform the person that he has a right to consult with counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

(2) address the person to determine whether his consent is—

(A) voluntary, and not the result of a threat or other improper inducement; and

(B) given with full knowledge of its consequences, including the fact that it may not be revoked after the court has accepted it.

(c) FINDING OF CONSENT AND ORDER OF REMOVAL.—If the court finds that the person's consent to removal is voluntary and given with full knowledge of its consequences, it shall, unless the Attorney General notifies the court that the foreign state or the United States objects to such removal, order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition. The court shall order that the person be held in official detention until surrendered.

(d) LIMITATION ON DETENTION PENDING REMOVAL.—A person whom the court orders surrendered pursuant to subsection (c) may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings, the person is not removed from the United States within thirty days after the court ordered the person's surrender. The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

§ 3194. Extradition hearing

(a) IN GENERAL.—The court shall hold a hearing to determine whether the person against whom a complaint is filed is extraditable, unless the hearing is waived pursuant to section 3193. The purpose of the hearing is limited. The court does not have jurisdiction to determine the merits of the charge against the person by the foreign state or to determine whether the foreign state is seeking the extradition of the person for political offense, for an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions. The hearing shall be held as soon as practicable after the arrest of the person or issuance of the summons.

(b) RIGHTS OF THE PERSON SOUGHT.—The court shall inform the person of the limited purpose of the hearing, and shall inform him that—

(1) he has the right to be represented by counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

(2) he may cross-examine witnesses who appear against him and may introduce evidence in his own behalf with respect to the matters set forth in subsection (d).

(c) EVIDENCE.—

(1) A deposition, warrant, or other document, or a copy thereof, is admissible as evidence in the hearing if—

(A) it is authenticated in accordance with the provisions of an applicable treaty or law of the United States;

(B) it is authenticated in accordance with the applicable law of the foreign state, and such authentication may be established conclusively by a showing that—

(i) a judge, magistrate, or other appropriate officer of the foreign state has signed a certification to that effect; and

(ii) a diplomatic or consular officer of the United States who is assigned or accredited to the foreign state, or a diplomatic or consular officer of the foreign state who is assigned or accredited to the United States, has certified the signature and position of the judge, magistrate, or other officer; or

(C) other evidence is sufficient to enable the court to conclude that the document is authenti

(2) A certificate or affidavit by an appropriate official of the Department of State is admissible as evidence of the existence of a treaty or its interpretation.

(3) If the applicable treaty requires that such evidence be presented on behalf of the foreign state as would justify ordering a trial of the person if the offense had been committed in the United States, the requirement is satisfied if the evidence establishes probable cause to believe that an offense was committed and that the person sought committed it.

(d) FINDINGS.—The court shall find that the person is extraditable if it finds that—

(1) there is proble cause to believe that the person arrested or summoned to appear is the person sought in the foreign state;

(2) the evidence presented is sufficient to support the complaint under the provisions of the applicable treaty;

(3) no defense to extradition specified in the applicable treaty, and within the jurisdiction of the court, exists; and

(4) the act upon which the request for extradition is based would constitute an offense punishable under the laws of—

(A) the United States;

(B) the State where the fugitive is found; or

(C) a majority of the States.

The court may base a finding that a person is extraditable upon evidence consisting, in whole or in part, of hearsay or of properly certified documents.

(e) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropriate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.

§ 3195. Appeal

(a) IN GENERAL.—Either party may appeal, to the appropriate United States court of appeals, the findings by the district court on a complaint for extradition. The appeal shall be taken in the manner prescribed by rules 3 and 4(b) of the Federal Rules of Appellate Procedure, and shall be heard as soon as practicable after the filing of the notice of appeal. Pending determination of the appeal, the district court shall stay the extradition of a person found extraditable.

(b) DETENTION OR RELEASE PENDING APPEAL.—If the district court found that the person sought is—

(1) extraditable, it shall order that the person be held in official detention pending determination of the appeal, or pending a finding by the court of appeals that the person has established that special circumstances require his release;

(2) not extraditable, it shall order that the person be released pending determination of an appeal unless the court is satisfied that the person is likely to flee or to endanger the safety of any other person or the community.

If the court orders the release of a person pending determination of an appeal, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

(c) SUBSEQUENT REVIEW.—No court has jurisdiction to review a finding that a person is extraditable unless the person has exhausted his remedies under subsection (a). If the person files a petition for habeas corpus or for other review, he shall specify whether the finding that he is extraditable has been upheld by a court, and, if so, shall specify the court, the date, and the nature of each such proceeding. A court does not have jurisdiction to entertain a person's petition for habeas corpus or for other review if his commitment has previously been upheld, unless the court finds that the grounds for the petition or appeal could not previously have been presented.

§ 3196. Surrender of a person to a foreign state

(a) RESPONSIBILITY OF THE SECRETARY OF STATE.—If a person is found extraditable pursuant to section 3194, the Secretary of State, upon consideration of the provisions of the applicable treaty and this chapter—

(1) may order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition;

(2) may order such surrender of the person contingent on the acceptance by the foreign state of such conditions as the Secretary considers necessary to effectuate the purposes of the treaty or the interest of justice; or

(3) shall decline to order the surrender of the person if the Secretary is persuaded, by written evidence and argument submitted to him by the person sought, that the foreign state is seeking the person's extradition for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions. When it is claimed that the foreign government is seeking the person for a political offense or an offense of a political character, the Secretary will make his determination in accordance with the following principles. A

political offense or an offense of a political character normally does not include—

(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

(D) an offense with respect to which a treaty obligates the United States to either extradite or prosecute a person accused of the offense;

(E) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnapping, the taking of a hostage, or serious unlawful detention;

(F) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

(G) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs; or

(H) an attempt or conspiracy to commit an offense described in clauses (A) through (G) of this subparagraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

The Secretary may order the surrender of a person who is a national of the United States unless such surrender is expressly forbidden by the applicable treaty or by the laws of the United States. A decision of the Secretary under paragraph (1) or (2) or a decision of the Secretary under paragraph (3) with respect to whether the foreign state is seeking the person's extradition for the purpose of prosecuting or punishing the person for his political opinions is final and is not subject to judicial review. A decision by the Secretary under paragraph (3) denying the person's claim that the foreign state is seeking his extradition for a political offense or an offense of a political character may be appealed by the person to the United States court of appeals to which an appeal under section 3195 would lie. The court shall not set aside the Secretary's decision if it is based on substantial evidence. The appeal shall be determined promptly. Pending determination of the appeal, the court shall stay the extradition of the person, unless the court determines that the appeal is frivolous or taken for purposes of delay.

(b) NOTICE OF DECISION.—The Secretary of State, upon ordering a person's surrender or denying a request for extradition in whole, or in part, shall notify the person sought, the diplomatic representative of the foreign state, the Attorney General, and the court that found the person extraditable. If the Secretary orders the person's surrender, he also shall notify the diplomatic representative of the foreign state of the time limitation on the person's detention that is provided by subsection (c)(2).

(c) LIMITATION ON DETENTION PENDING DECISION OR REMOVAL.—A person who is found extraditable pursuant to section 3194 may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings—

(1) the Secretary does not order the person's surrender, or decline to order the person's surrender, within forty-five days after his receipt of the court's findings and the transcript of the proceedings; or

(2) the person is not removed from the United States within thirty days after the Secretary ordered the person's surrender.

The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

§ 3197. Receipt of a person from a foreign state

(a) APPOINTMENT AND AUTHORITY OF RECEIVNIG AGENT.—The Attorney General shall appoint an agent to receive, from a foreign state, custody of a person accused of a Federal, State, or local offense. The agent shall have the authority of a United States marshal. The agent shall convey the person directly to the Federal or State jurisdiction that sought his return.

(b) TEMPORARY EXTRADITION TO THE UNITED STATES.—If a foreign state delivers custody of a person accused of a Federal, State, or local offense to an agent of the United States on the condition that the person be returned to the foreign state at the conclusion of criminal proceedings in the United States, the Bureau of Prisons shall hold the person in custody pending the conclusion of the proceedings, and shall then surrender the person to a duly appointed agent of the foreign state. The return of the person to the foreign state is not subject to the requirements of this chapter.

§ 3198. General provisions for chapter

(a) DEFINITIONS.—As used in this chapter—

(1) "court" means—

(A) a United States district court established pursuant to section 132 of title 28, United States Code, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands; or

(B) a United States magistrate authorized to conduct an extradition proceeding;

(2) "foreign state", when used in other than a geographic sense, means the government of a foreign state;

(3) "foreign state", when used in a geographic sense, includes all territory under the jurisdiction of a foreign state, including a colony, dependency, and constituent part of the state; its air space and territorial waters; and vessels or aircraft registered in the state;

(4) "treaty" includes a treaty, convention, or international agreement, bilateral or multilateral, that is in force after advice and consent by the Senate; and

(5) "warrant", as used with reference to a foreign state, means any judicial document authorizing the arrest or detention of a person accused or convicted of a crime.

(b) PAYMENT OF FEES AND COSTS.—Unless otherwise specified by treaty, all transportation costs, subsistence expenses, and translation costs incurred in connection with the extradition or return of a person at the request of—

(1) a foreign state, shall be borne by the foreign state unless the Secretary of State directs otherwise;

(2) a State, shall be borne by the State; and

(3) the United States, shall be borne by the United States.

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